

REMARKS/ARGUMENTS

Status of the Claims

Claims 1-39 remain in the application;

Claims 1, 4, 5-8, 12, 16, 17, 19, 20, and 28 have been amended;

Claims 40-42 have been added.

The Examiner has acknowledged that claims 4-8, 10, 11, 15-17, and 20-34 are directed to allowable subject matter.

Claim Objections

Claims 4-8, 10, 11, 15-17, and 20-34 were objected as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claim.

Claim rejections under 35 U.S.C. § 112, second paragraph.

Claims 6-8 have stand rejected under been rejected under 35 U.S.C., § 112, second paragraph as being indefinite for failing to point out and distinctly claim the subject matter which applicant regards as the invention, with the Examiner asserting that the claims fail to define any structure to accomplish a particular function.

Applicant has amended the above noted claims to include structure that supports the functional limitation. Applicant submits that amended claims 6-8 are no longer indefinite and respectfully requests that the claims be allowed and/or reconsidered.

Claim rejections under 35 U.S.C. § 102(b)

Claims 1-3, 9, 12-14, 18, 19, and 36-39 stand rejected under 35 U.S.C. §102(b) as being anticipated by published U.S. Patent Application No. 2002/0017403 (Phely).

While it is believed that the above rejection has been rendered moot by Applicants' amendment to the claims at issue, Applicant respectfully disagrees. It is well settled that "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."¹

Phely discloses a track drive device for replacing a main wheel of a vehicle, such as a tractor. Phely shows and discloses a frame 14 that is designed to be fixed to the chassis of a vehicle. Phely does not show or disclose first and second hub assemblies that are configured and arranged to be fastened to first and second axles of a vehicle whose wheels have been removed, as recited in independent claims 1, 18, 35, and 36. Instead, Phely shows and discloses a main wheel 42 and drive wheel 28. The main wheel 42 is connected by a fork 44 to tensioning and damping mechanism 46 that is attached to the front part of a frame 14 (see, paragraph 46). Contrary to what the Examiner asserts, the main wheel 42 is not attached to any vehicle axle whose wheel has been removed.

Paragraphs 36 and 60, to which the Examiner specifically refers, add little. Paragraph 36 merely states that the track drive may be installed as a replacement "for a conventional wheel". A single wheel is not the equivalent to a plurality of wheels.

There is an articulating connection between oscillating element 18 and elements 68, 64, and 52. However, the oscillating movement of element 18 is not opposed by "resilient member 46" as asserted by the Examiner. Instead, oscillating movement 18 is opposed by suspension element 58.

¹ *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Applicant disagrees with the Examiner's assertion that the methods of converting a wheeled vehicle to a tracked vehicle are inherent to Phely. The methods are simply not there. Phely does not disclose or show any method by which his device may be installed onto a vehicle. Moreover, Phely only discloses that it may be used as a replacement for one wheel.

It is submitted that the reference of Phely does not anticipate all of the features recited in independent claims 1, 18, 35, 36, nor the dependent claims, which included additional limitations. Applicant respectfully request that the rejection of the claims under 35 U.S.C. §102(b) be withdrawn and passed to issue or, in the alternative, reconsidered and further examined.

CONCLUSION

On the basis of the foregoing amendments, remarks, and arguments of record, applicant respectfully submits that claims 1-42 are in condition for allowance and Applicant respectfully requests that a timely Notice of Allowance be issued in this case. Alternatively, if the Examiner is of the opinion that prosecution of the application may be expedited by a telephonic interview, the Examiner is invited to contact applicant's representative at the telephone number listed below.

Respectfully submitted,
For the Applicants
By their Attorneys,

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